

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE New York City Policing During Summer  
2020 Demonstrations

This filing is related to:

JARRETT PAYNE; ANDIE MALI; CAMILA  
GINI; VIDAL GUZMAN; VIVIAN MATTHEW  
KING-YARDE; CHARLIE MONLOUIS-  
ANDERLE; JAIME FRIED; MICAELA  
MARTINEZ; JULIAN PHILLIPS; NICHOLAS  
MULDER; and COLLEEN MCCORMACK-  
MAITLAND,

Plaintiff,

v.

MAYOR BILL DE BLASIO; POLICE  
COMMISSIONER DERMOT SHEA; CHIEF OF  
DEPARTMENT TERENCE MONAHAN; CITY  
OF NEW YORK; SERGEANT GYPSY  
PICHARDO; SERGEANT KEITH CHENG;  
OFFICER MATTHEW TARANGELO;  
OFFICER MATTHEW L. PERRY;  
LIEUTENANT THOMAS R. HARDELL;  
DETECTIVE DAMIAN RIVERA; OFFICER  
JACQUELINE VARGAS; OFFICER JOSEPH  
DECK; LIEUTENANT MICHAEL BUTLER;  
OFFICER AARON HUSBANDS; SERGEANT  
THOMAS E. MANNING; OFFICERS JOHN  
DOE 1-26; OFFICER JANE DOE 1; OFFICER  
DOE ESPOSITO;  
SERGEANT DOE CARABALLO,

Defendants,

POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.,

Intervenor-Defendant.

20-cv-8924 (CM)(GWG)

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**ANSWER TO FIRST  
AMENDED  
COMPLAINT**

Intervenor-Defendant the Police Benevolent Association of the City of New York, Inc. (the “PBA”), through its undersigned counsel, answers the First Amended Complaint in this matter, dated March 5, 2021, as follows:

1. Denies the allegations set forth at paragraphs 1-4, 7, 19-21, 40-43, 94, 220, 223, 230, 232-233, and 235-236.

2. Denies knowledge or information sufficient to form a belief as to the allegations set forth at paragraphs 5-6, 8-18, 23-39, 52, 58-61, 63, 67, 87-91, 95, 107-217, 224-225, 231, 234 and 237.

3. Denies the allegations set forth at paragraph 22, except admits that the City of New York is a Municipal Corporation organized under the laws of the State of New York and that it maintains a police department.

4. Denies knowledge or information sufficient to form a belief as to the allegations set forth at paragraphs 44-51, 53-57, 62, 64-66, 68-85, 92-93, 96-106 and 138, and respectfully refers the Court to the circumstances surrounding the alleged matters, including but not limited to, where applicable, any sources cited by the Complaint, for full content and/or context.

5. Denies knowledge or information sufficient to form a belief as to the allegations set forth at paragraphs 86, 218-219 and 221-222 and notes that the allegations at issue are not sufficiently specific to allow a more detailed response. To the extent paragraph 219 seeks to incorporate allegations from another lawsuit by reference, the PBA objects that it is not obliged to answer such allegations and,

to the extent such an answer may be deemed to be required, denies them.

Paragraph 226 is a demand for a jury trial and therefore no response is required.

6. Asserts that the allegations at paragraphs 227-229 are legal conclusions to which no response is required and, to the extent a response is deemed to be required, denies that such allegations are applicable to the facts at bar.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The first amended complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct/assumption of risk or the culpable and/or negligent conduct of others.

### **THIRD AFFIRMATIVE DEFENSE**

Defendants did not violate any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, are protected by qualified immunity.

### **FOURTH AFFIRMATIVE DEFENSE**

Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United State or the State of New York or any political

subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

**FIFTH AFFIRMATIVE DEFENSE**

To the extent any force was used, such force was reasonable, justified, and necessary to accomplish official duties and to protect the officers' own physical safety and the safety of others.

**SIXTH AFFIRMATIVE DEFENSE**

Punitive damages cannot be assessed against defendant City.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs provoked any incident.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs may have failed to mitigate their alleged damages.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a claim under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978).

**TENTH AFFIRMATIVE DEFENSE**

At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, they are entitled to immunity on state law claims.

**ELEVENTH AFFIRMATIVE DEFENSE**

At all times relevant to the acts alleged in the complaint, the duties and

functions of the municipal defendant officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City is entitled to governmental immunity from liability under New York common law.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Any claims arising under New York State law may be barred, in whole or in part, by reason of plaintiff's failure to comply with the requirements of the N.Y. GEN. MUN. LAW § 50-(e), (h) and/or (i).

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

The PBA may rely on other defenses if and when such defenses become known during the course of litigation and hereby reserves the right to assert such defenses.

Dated: New York, New York  
March 31, 2022

**LAW OFFICES OF ROBERT S. SMITH**

By: /s/ Robert S. Smith  
Robert S. Smith

7 Times Square, 28<sup>th</sup> Floor  
New York, N.Y. 10036  
Tel.: (917)225-4190  
Email: [robert.smith@rssmithlaw.com](mailto:robert.smith@rssmithlaw.com)

- and -

**SCHLAM STONE & DOLAN LLP**

By: /s/ Richard H. Dolan  
Richard H. Dolan  
Thomas A. Kissane

26 Broadway, 19<sup>th</sup> Floor  
New York NY 10004  
Tel.: (212) 344-5400  
Fax: (212) 344-7677  
Email: [rdolan@schlamstone.com](mailto:rdolan@schlamstone.com)  
Email: [tkissane@schlamstone.com](mailto:tkissane@schlamstone.com)

*Attorneys for Intervenor-Defendant Police  
Benevolent Association of the City of New  
York, Inc.*